

## From Law Office to Oval Office

**Edited by Norman Gross**

**Foreword by  
Justice Sandra Day O'Connor**

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*Benz Harrison*

*Twenty-third President (1889-93)*



**BIRTH**

August 20, 1833  
North Bend, Ohio

**EDUCATION**

Public schools  
Farmer's College  
Miami (Ohio) University  
Studied law in Cincinnati, Ohio, with the firm of  
Storer and Gwynne  
Admission to the bar: 1853

**OTHER OCCUPATIONS/PUBLIC OFFICES**

Indiana Supreme Court reporter  
Indiana city attorney  
Civil War brigadier general  
U.S. senator

**DEATH**

March 13, 1901  
Indianapolis, Ind.

**LAW CAREER IN BRIEF**

While Harrison's early practice was marked by financial struggles and few clients, he attracted enough attention to be appointed city attorney. In that office, several court cases gained him publicity and clients. Subsequently, as a law firm partner, he focused mainly on debt collection and divorce cases and also served as reporter of the supreme court of Indiana. Following his service in the Civil War, a major break came in two high-profile cases: the double murder trial of Nancy Clem and the civil damages suit of Lambdin Milligan. Harrison proceeded to have a distinguished legal career both before and after his presidency, including fifteen cases before the U.S. Supreme Court and one before the International Tribunal in Paris.

# Benjamin Harrison: High-Priced Counsel

ALLEN SHARP

In 1897, four years after Benjamin Harrison left the presidency, a one-paragraph story appeared on the front page of the *New York Times*:

*At its last meeting of the Indiana Tax Commissioners, it was voted to secure, if possible, the services of ex-President Harrison to make an argument in the Supreme Court in behalf of the State of Indiana to enforce payment of taxes assessed against the expressed companies. The Commissioners learned that he would not appear for a fee of less than \$5,000. In the California Irrigation cases, he received \$10,000. His largest fee was received two years ago from the Indianapolis Street Railway. It was \$25,000. In the Morrison Will case, at Richmond, Ind., he received \$19,000.*

One of the few ex-presidents who actively practiced law after leaving the White House, Harrison had come a long way since his days as a struggling new member of the bar more than forty years earlier. Indeed, such legal fees may have befitted a man described as "probably the ablest lawyer ever to be President."

In *The Harrisons*, Ross F. Lockridge Jr. describes the remarkable political transformation in four generations of that noted family. The first Benjamin Harrison, "The Signer," was part of the aristocratic plantation slave-owning society of the James and York Rivers in Virginia. He was also a member of the Continental Congress, a signer of the Declaration of Independence, and governor of Virginia just as the American War for Independence was coming to an end. The Signer's younger son, William Henry Harrison, was governor of the Indiana Territory, a war hero of sorts, and for thirty days president of the United States. William Henry's son, John Scott Harrison, was a Whig member of the

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*"They were close times, I tell you. A \$5.00 bill was an event."*

Benjamin Harrison, describing his early struggles as a lawyer

### THE COLD SPRINGS MURDER CASE

In 1868, a grisly double murder at Cold Springs of prominent businessman Jacob Young and his wife shocked the populace. Among those charged with the murder was Nancy Clem (pictured here), the "wife of a respectable grocer" who allegedly had built up significant debts to Young. Harrison's firm was retained to prosecute Clem, whose first trial resulted in a hung jury. In the second trial, Harrison personally took over the prosecution and secured a second degree murder conviction. The sensational case earned renown for Harrison, both among the citizenry and his fellow lawyers.



U.S. House of Representatives from Ohio at the midpoint of the nineteenth century. Representative Harrison's son, the second Benjamin Harrison, was a Republican U.S. senator from Indiana who supported Lincoln's antislavery views and became the second in his family to serve the nation as president of the United States.

Born in Ohio in 1833, Benjamin Harrison graduated from Miami University in 1852 and proceeded to study law in the Cincinnati office of Bellamy Storer, a former Whig congressman. He "kept his nose to the grindstone," which greatly pleased Storer, whose role in formulating Harrison's legal talents was similar to that which Stephen Logan exercised on young Abraham Lincoln. After two years in Storer's office, Harrison was admitted to the Ohio bar and soon thereafter, with his new wife Caroline, he moved to Indianapolis.

The early times in Indianapolis were a real struggle, and legal fees, even small ones, were scarce. The Indianapolis bar was considered one of the best in the country at that time, and while Harrison was not immediately accepted into the established firms, he received help in getting his practice started. The U.S. court clerk helped him find office space just across from the Bates House, then the most prominent hotel in Indianapolis, and through the good offices of the U.S. marshal, he was appointed a federal court crier at two dollars and fifty cents per day. He thus had a modest job and an equally modest office. His first fee was a five-dollar gold piece for winning a false pretenses case before a justice of the peace. Of these times, Harrison later remarked, "They were close times, I tell you. A \$5.00 bill was an event." His father helped support him with regular checks of twenty-five or fifty dollars.

Harrison soon captured the attention of Major Jonathan W. Gordon, prosecuting attorney of Marion County, and through him got involved in a jury trial where the defendant was accused of burglary at a place called Point Lookout. Opposing counsel in the case was Whig ex-governor David Wallace. Because Gordon was required to attend a lecture by Horace Mann at the time scheduled for closing arguments, that task fell to Harrison. The presiding trial judge heard the evening arguments in a dimly lit

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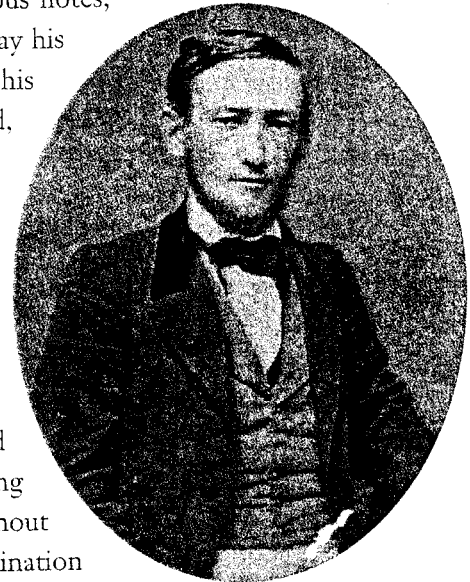
courtroom and though Harrison had compiled copious notes, the lack of adequate lighting caused him to throw away his written script and talk directly to the jury, utilizing his considerable memory. A guilty verdict was had and, more important, the praise of David Wallace. Thus commenced a preference for the courtroom, which would prevail in Harrison's professional life for nearly a half century.

He was soon appointed city attorney in Indianapolis, and in that capacity he assisted in the prosecution of a hotel servant charged with poisoning a guest's coffee. To prepare for the case, Harrison visited a doctor's office and spent the entire night reading books about poisons. The next day, apparently without sleep, he brilliantly conducted a slashing cross-examination based on his nocturnal research. The servant was convicted and Harrison would be renowned for his tough cross-examinations.

"Soon clients came his way and their fees were solid food to a financially famished attorney," wrote his biographer. Still, Harrison's economic situation remained extremely tight, causing great concern for his ability to support his young and growing family. Indeed, he was forced to borrow money from a federal clerk and accept further support from his father.

But Harrison's career was now on the move. He formed his first law partnership with William Wallace, a son of his former courtroom rival. In the early days of the firm, Harrison undertook tough, tedious grunt work while Wallace politicked. They had a huge collection practice, and though unglamorous, it did pay the bills. Harrison was meticulous in managing and collecting these accounts. According to his biographer, "The comparatively lax divorce laws of the state provided another lucrative source of income." Harrison's relationship with this prominent Hoosier family would deepen and last a lifetime. In Harrison's run for president in 1888, another Wallace son, Lew, would pen and publish an adoring campaign biography.

At this time, there were growing disagreements between Harrison and his father, with the young Harrison moving away from his family's ideological roots on the subjects of politics and slavery. His father was in the Congress that passed the Kansas-Nebraska Act, which Ben opposed strongly. Ben also supported



HARRISON THE YOUNG  
LAWYER

As city attorney in Indianapolis, Harrison helped prosecute a hotel servant charged with poisoning a guest's coffee. His quick grasp of complex medical issues and his tough cross-examination contributed to a conviction and earned him high praise.

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*"For Harrison,  
the conviction of  
Mrs. Clem was un-  
doubtedly his greatest  
courtroom triumph."*

Biographer Harry Sievers

the newly formed Republican Party and its presidential candidate, John Charles Fremont, and was the first of his family to join that party. "By June, 1856, he had shifted his political views on the slavery question sufficiently to give full approbation to the anti-slavery gospel."

In 1860, Republican candidate Harrison was elected to the office of reporter of the supreme court of Indiana. However, it provided no compensation except for a free market device permitting printing and selling of the official reports. He also continued his private practice, becoming a first-rate technical lawyer as well as a talented trial advocate and political orator. He was considered a terribly demanding taskmaster and an often humorless workaholic by office colleagues. It is said he even worked on case proofs during theatrical performances. He later bragged that he went to federal court contesting the taxability of the sales of the official reports and won.

In December 1861, with Harrison elected as reporter and Wallace elected as clerk of Marion County, their six-year law partnership terminated. Harrison would also enlist in the Union army, rising to the rank of brevet brigadier general and generally getting good grades as one of the ablest of the "political generals." When the war ended, he returned to Indiana, where he was again elected to the reporter's office.

In his closing days as reporter, his law firm was retained as special prosecutor in a sensational murder case. In 1868, a prominent businessman, Jacob Young, and his wife were murdered, their bodies found in a town near Indianapolis. Charged with the murder were three defendants, including thirty-seven-year-old Nancy Clem, who was tried separately. Her trial involved 150 witnesses, ending in a hung jury. When a new trial began in 1869, Harrison took over the prosecution, calling more than 250 witnesses and establishing that Clem's alibi was the product of bribery. After deliberating for forty-eight hours, the jury found Nancy Clem guilty of second-degree murder. "For Harrison, the conviction of Mrs. Clem was undoubtedly his greatest courtroom triumph," wrote biographer Harry Sievers. "Lawyers from all over the state had witnessed his efforts as a public prosecutor, and the Harrison name, already celebrated in Indiana, enjoyed fresh renown." Harrison also was attracting widespread attention as an orator at political meetings and

especially political affairs.

He soon became a possible postmaster general, a law professor for antiwar education in Indiana. The coming of death. In the United States, free, ruling civil court the prevailing

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especially with Union army veterans, becoming a master of the political art of "waving the bloody shirt."

He soon attracted further attention from one of the most visible post-Civil War cases, *Ex parte Milligan*. Lambdin P. Milligan, a lawyer from Huntington, Indiana, had been tried in 1864 for antiwar activities during the Civil War by a military commission in Indianapolis that consisted of twelve Union army officers. The commission found Milligan guilty and sentenced him to death. In 1866, the case made its way to the Supreme Court of the United States, which unanimously ordered Milligan to be set free, ruling that as a private citizen, he should have been tried by civil courts then operating in Indianapolis. Interestingly, one of the prevailing lawyers in this appeal was James A. Garfield.

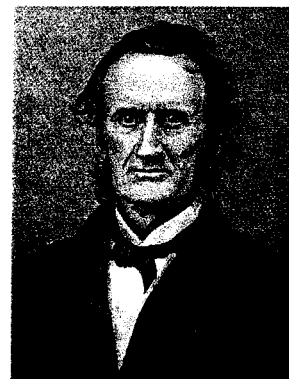
After returning to his Indiana home, Milligan filed a state suit alleging false arrest and false imprisonment and seeking one hundred thousand dollars in damages. The defendants in the case included the Military Commission members and such prominent persons as Civil War governor Oliver P. Morton of Indiana, then a U.S. senator, and Ulysses S. Grant, former Army general-in-chief and then president of the United States. Grant sought out Harrison to lead the defense of this case, which became one of the first civil rights jury trials claiming money damages for a violation of the Constitution. Milligan retained powerful Democratic lawyer Thomas A. Hendricks, who had served in both houses of the Indiana legislature and U.S. Congress and who would later become governor of Indiana and vice president of the United States with Cleveland.

The 1871 trial lasted two weeks, resulting in massive media coverage, including verbatim front-page reporting of testimony in the leading Indianapolis newspapers. Throughout, Harrison's basic tactic was to retry the Civil War in the courtroom and to establish that in reality Milligan was a traitor. The resulting verdict was for Milligan, but for only five dollars and costs (neither of which he apparently collected).

While Harrison and Hendricks were contesting the Milligan case in a federal courtroom in Indianapolis, they were also opposing counsel in a U.S. Supreme Court case, *New Albany v. Burke*. Hendricks represented taxpayers in New Albany seeking to enjoin the city from paying interest on bonds issued to construct a railroad while Harrison represented the city. The federal

#### THE MILLIGAN CIVIL DAMAGES SUIT

Several years after Indiana lawyer Lambdin P. Milligan (pictured here) prevailed in the landmark Supreme Court case that bears his name—*Ex parte Milligan*—he sued the military commission that tried and sentenced him for one hundred thousand dollars in damages. Milligan stood on firm legal ground, armed with the high court ruling that the military commission had had no jurisdiction in the matter. President Ulysses S. Grant, a named defendant in the case, called upon General Benjamin Harrison to lead the defense. In the high-profile, two-week trial, Harrison's stirring arguments regarding the valor of Union soldiers and Milligan's traitorous activities bore fruit. Though Milligan won the case, he was awarded a meager five dollars in damages.



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*"General Harrison  
was by far the ablest  
and profoundest  
lawyer among our  
Presidents . . . recog-  
nized as one of  
the leaders of the  
American Bar."*

Senator Chauncey Depew

circuit court in Indiana had issued an injunction requested by the taxpayers, and the Supreme Court reversed and ruled against the taxpayers. Thus, Harrison prevailed in his first case before the nation's highest court.

A year later, his second high court case, *Burke v. Smith*, involved the issue of whether subscribers to stock in an Indiana railroad corporation could be held liable for amounts in excess of the face amount of their subscription. The railroad had become insolvent and wanted the stock subscribers to pay more. Harrison argued for the railroad, but the subscribers, represented by Congressman Michael Kerr, won. Appearing in the case with Kerr was James A. Garfield. Thus, two future presidents were opposing counsel in the same case, probably the only such instance in our nation's history.

In 1875, Harrison was involved in another high-visibility case, this one involving alleged misconduct at the Indianapolis Deaf and Dumb Institute. A mute member of the school's senior class, Ida K. Fawcner, had been seduced and been the subject of an abortion. Harrison represented the superintendent of the Institute and one of its instructors, defendants in the case. Harrison cross-examined Ida "unmercifully" for two days, focusing on changes in her story. Both his clients were exonerated. "His legal acumen and oratorical genius had once more enhanced his political possibilities," wrote Sievers, "for few in Indiana had failed to follow the fascinating story of 'a dumb innocent that could not say him nay.'"

Soon after this trial, Harrison was involved in a case involving the so-called Whiskey Ring that operated during the Grant administration. Harrison represented Hiram Brownlee, a federal internal revenue officer who was among those accused of accepting a bribe from a distiller. While most cases resulted in convictions, Brownlee was acquitted. One of the key items in his case involved white kid gloves he allegedly wore in accepting the bribe, charges that Harrison exploded in his examination of witnesses.

The kid glove quickly became a symbol for Harrison's political enemies. In his unsuccessful 1876 campaign for governor, the Democratic press lambasted him, "Give Harrison a kid-glove client and a two thousand dollar fee and no matter how guilty the culprit may be, his intellectual grasp will readily separate crime from such respectability."

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Following other high-profile cases—including his defense of railroad strike leaders and prosecution of an election fraud case—the Indiana General Assembly elected Harrison to the U.S. Senate in early 1881. While there, he was in the Supreme Court for its decision in the landmark *Civil Rights Cases* of 1883. He strongly disagreed with the decision, which severely limited governmental actions against private acts of discrimination. Notwithstanding his Virginia origins, Harrison took the view of the so-called Radical Republicans on issues of race and reconstruction. He supported the Civil Rights Act of 1875 and later, as president, he strongly supported federal legislation to protect the voting rights of southern blacks under the Fifteenth Amendment. He also backed his views with financial support. After leaving the presidency, his charitable contributions included “a sizeable annual contribution for the education of Negroes in the South.”

During his term in the U.S. Senate, Harrison argued six cases before the Supreme Court. In the 1881 case of *Evansville Bank v. Britton*, he was again opposed by Thomas A. Hendricks, who appeared for the bank while Harrison argued for Britton. A closely divided Court ruled it discriminatory to tax national bank shares under a statute of Indiana without permitting the owner of them to deduct from their assessed value the amount of bona fide indebtedness. The case was a technical win for Harrison.

Two years later, Harrison prevailed in *Warren v. King*, a case involving the foreclosure of two railroad mortgages and other complicated financial transactions. The same year he prevailed in *Indiana Southern R. Co. v. Liverpool, London and Globe Ins. Co.*, a case in which former presidential candidate Samuel J. Tilden was trustee for the issuance of a million and a half bonds held by the insurance company.

Harrison also represented the Farmers Loan and Trust Company, an appellee in *Dimpfal v. Ohio and Mississippi Railroad Co.*, in which he successfully argued that the objecting minority stockholders had not exhausted all means to obtain redress of their grievances within the corporation. Near the end of his Senate term, he argued two more high court cases, *Smith v. Craft* and *Jewell v. Knight*, that were combined for argument and decision. In these cases, the Court dismissed the appeals pursued by Harrison.

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*“If our great corporations would more scrupulously observe their legal limitations and duties, they would have less cause to complain of the unlawful limitations of their rights or of violent interference with their operations.”*

Benjamin Harrison, in his inaugural address

### CREATION OF CIRCUIT COURTS OF APPEAL

Harrison was a strong advocate of judicial reforms and improvements. In "the first structural modification of the federal judicial system in more than one hundred years," the 1891 Congress approved creation of intermediate courts to relieve the Supreme Court of its backlogged caseload and to avoid delays that Harrison said "amounted practically to the denial of justice in a large number of cases." As senator and president, Harrison also supported increases in the salaries of federal judges.



Politics and law constantly interacted throughout Harrison's life, and especially during his presidency, as he carried to the White House a series of issues and opinions that often found expression in his legal stands. For example, Harrison was a champion of personal freedom and believed such freedom was best expressed in political terms at the ballot box. His support of the 1890 federal elections bill was consistent with positions he had taken throughout his career to include the freedman within the body politic. In his inaugural address he asked, "How long will those who rejoice that slavery no longer exists cherish or tolerate the incapacities it put upon their communities?"

Harrison was also a friend of public order who vigorously resisted mobs, violent strikes, and other challenges to that order. To quote his inaugural address, "A community where law is the rule of conduct and where courts, not mobs, execute its penalties is the only attractive field for business investments and honest labor." He was thus willing to use the army as a constabulary in such events as the Johnson County War in Wyoming in 1890 or the Coeur d'Alene strikes of 1892 in Idaho.

Harrison was a supporter of private property, as were virtually all politicians of his era. But like a growing number of his contemporaries, and often contrary to his party's following, he was troubled by the corporate excesses that clearly stimulated expressions of dissent. Again to quote his inaugural, "If our great corporations would more scrupulously observe their legal limitations and duties, they

would have less cause to complain of the unlawful limitations of their rights or of violent interference with their operations." Little wonder he would later sign the 1890 Sherman Antitrust Act and otherwise challenge monopolies that denied to others the opportunity to achieve what those transforming generations had achieved.

In his term as president, Harrison named four justices to the Supreme Court: David Brewer of Kansas, Henry Billings Brown of Michigan, George Shiras Jr. of Pennsylvania, and Howell Jackson of Tennessee. William Henry Harrison Miller of Indiana served as his only attorney general. William Howard Taft of

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Ohio—bracketed by brief terms of service by Orlow Chapman of New York and Charles Aldrich of Illinois—was his solicitor general. Together their appointments illuminate several of the key features of his politics.

In the same manner that he sought fitness in other appointees, he looked for individuals who might bring credit upon the judicial branch. Brewer and Brown were district court justices, Shiras was an experienced Pittsburgh trial lawyer, and Jackson had a rich mixture of state court credentials. In at least one case Harrison sent a clear message to the Pennsylvania bosses, Cameron and Quay, about the limits of patronage by naming Shiras, an individual largely unconnected with their machine. Taft was later rewarded for his service with an appointment to the Sixth Circuit. Harrison was not above listening to recommendations, however. Brewer was the nephew of Justice Stephen Field, Shiras was an attorney for Andrew Carnegie, and Jackson had served in the U.S. Senate in a seat adjoining Harrison's. Miller, the extreme case, was Harrison's law partner.

A significant part of Harrison's legal career occurred after he left the presidency on March 4, 1893. He remained active in law practice until his death on March 13, 1901, reportedly averaging \$150,000 a year. Although this postpresidential practice was unusual, it was not unprecedented. John Quincy Adams, as ex-president and member of the U.S. House of Representatives, argued the famous *Amistad* case before the Supreme Court in 1841 but did not otherwise engage in the practice of law. Grover Cleveland engaged in law practice with a prestigious law firm in New York between his presidencies and argued, without success, *Peake v. New Orleans*, before a Supreme Court to which he had appointed two members, including the chief justice. Of course, William Howard Taft had a distinguished tenure as chief justice of the United States following his presidency.

Early in 1895, Harrison was plaintiff's counsel in a huge and complicated will contest in Richmond, Indiana, involving the estate of banker James L. Morrison. Morrison was said to have left a personal estate worth approximately \$625,000 plus real estate. The children of his deceased son challenged a will that gave most of the estate to his daughter. His opponent in the highly visible case was Republican congressman Henry Underwood Johnson. A settlement was achieved and Harrison made a huge fee (reports

CHIEF COUNSEL FOR  
VENEZUELA

While the press did not generally present Harrison in the most flattering manner, his legal talents were highly regarded and in great demand. In addition to frequent appearances before the U.S. Supreme Court, Harrison served as chief counsel to Venezuela in its boundary dispute with British Guiana before the International Tribunal in Paris. Though his closing argument of twenty-five hours was acclaimed "a masterful performance," the three-judge tribunal (which included Harrison Supreme Court appointee David Brewster) ruled in favor of the British. Discouraged but undaunted, Harrison believed that the decision was driven by European power politics rather than international law.



range from \$19,000 to \$25,000). An interesting aftermath of this trial is found in the *New York Times* of that year. Quoting a story that appeared in the *Chicago Chronicle*, it noted the following exchange in the trial when Judge Black ruled against Johnson on a key point:

JOHNSON: "If the presence of an ex-President in this case is controlling these rulings, it is time we knew it beyond doubt."

HARRISON: "I assert there is no ex-President in this case. I am here to discharge the sworn duties of my profession as I see them. If the people of this country have seen cause to honor me, it is no reason why I should not appear in the capacity of counselor nor a reason why I should be driven from this court."

Johnson later devoted a considerable portion of a signed article to putting a different spin on these proceedings, but it is not disputed that in Harrison's final argument, he vowed never again to appear in a jury case, and apparently he did not.

Harrison's most prominent representation after his presidency was as chief counsel for the government of Venezuela in a boundary dispute with British Guiana in South America. His fee was considerable—he insisted upon receiving a retainer of twenty

thousand dollars and quarterly payments of ten thousand dollars until the International Tribunal in Paris rendered its decision, which added up to eighty thousand dollars for his services. After lengthy arguments, the three-judge tribunal—which included David J. Brewer, whom Harrison had appointed to the Supreme Court—ruled in favor of the British contentions, much to the consternation of Harrison and his legal entourage. Harrison may have been correct in considering the decision to have been basically driven by European power politics rather than international law. Interestingly, despite its prominence, Harrison's performance in Paris attracted far less press attention than the Dreyfus case then being tried in Rennes.

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Harrison made a series of appearances before the Supreme Court of the United States between 1896 and 1898. At that time, the Court included Justices David Brewer, George Shiras, and Henry Brown, all appointed by Harrison. While press reports contained numerous references to Harrison's activities during this period, including the Morrison will case and the International Arbitration case, they did not raise questions about the propriety of an ex-president appearing before a Supreme Court to which he had appointed members. In the prior decade, Grover Cleveland appeared before a Court to which he had appointed both Chief Justice Fuller and Justice Lamar, and apparently no question arose at that time either.

Harrison's Supreme Court arguments included the cases of *Fallbrook Irrigation District v. Bradley*, *Triga v. Modesto Irrigation District*, *Forsyth v. City of Hammond*, *City Ry. Co. v. Citizens State Railroad Co.*, *Magoun v. Illinois Trust & Savings Bank*, and *Sawyer v. Cochersperger*. He enjoyed mixed success in these cases, which involved constitutional questions on such matters as the Illinois inheritance tax, takings of private property for public use, and the right to determine municipal boundaries.

As the end of his life neared, Harrison appeared one last time before the Supreme Court of Indiana in *Campbell v. City of Indianapolis*, a major 1900 case dealing with the state limits on bonding authority for a municipal school corporation. A closely divided court adopted Harrison's argument for the purposes of the bonding limitation in Indiana's constitution, holding that the city and school corporation were separate and distinct, giving the latter much greater bonding authority. The legacy of this case was important to the development of public education in Indiana. At this time, Harrison also served as an active member of the Board of Trustees of Purdue University.

Indiana Supreme Court Judge Leander Monks, in his three-volume *Courts and Lawyers in Indiana*, said of Harrison: "As a lawyer, in its broad and best sense, he was considered second to no one in America." Others would echo this sentiment. In *My Memories of Eighty Years*, Chauncey M. Depew stated: "General Harrison was by far the ablest and profoundest lawyer among our Presidents. . . . After retirement, he entered at once upon the practice of his profession of the law and almost immediately became recognized as one of the leaders of the American Bar."

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*"I assert there is no ex-President in this case. I am here to discharge the sworn duties of my profession as I see them."*

Benjamin Harrison,  
responding to an opposing  
counsel's insinuation of  
undue influence